

6.0 Regulatory Framework

This section describes the regulatory framework affecting the alternatives, including the permit requirements associated with the alternatives. The U.S. Department of Energy (DOE) has procedures implementing the National Environmental Policy Act (NEPA) (42 USC 4321 et seq.) in the Code of Federal Regulations (CFR) (10 CFR 1021). Section 1021.103 of the procedures adopts the Council on Environmental Quality (CEQ) regulations at 40 CFR 1500–1508 for implementing NEPA. This draft Hanford Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (HSW EIS) was prepared in accordance with the DOE and CEQ NEPA implementing procedures.

6.1 Potentially Applicable Statutes

Significant statutes with potential applicability to the subject matter of the HSW-EIS are listed below.

- **American Antiquities Preservation Act (16 USC 431 et seq.)**

The American Antiquities Preservation Act protects historic and prehistoric ruins, monuments, and antiquities, including paleontological resources, on federally controlled lands.

- **American Indian Religious Freedom Act (42 USC 1996)**

The American Indian Religious Freedom Act states that it will be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

- **Archaeological and Historic Preservation Act (16 USC 469 et seq.)**

The purpose of the Archaeological and Historic Preservation Act is to provide for the preservation of historical and archeological data (including relics and specimens) that might otherwise be irreparably lost or destroyed as the result of federal actions.

- **Archaeological Resources Protection Act (16 USC 470aa et seq.)**

The Archaeological Resources Protection Act requires a permit for any excavation or removal of archaeological resources from federal or Indian lands. Excavations must be undertaken for the purpose of furthering archaeological knowledge in the public interest, and resources removed are to remain the property of the United States. Consent must be obtained from the Indian Tribe or the federal agency having authority over the land on which a resource is located before issuance of a permit. The permit must contain terms and conditions requested by the Tribe or federal agency.

- **Atomic Energy Act (42 USC 2011 et seq.)**

The Atomic Energy Act (AEA) provides the fundamental jurisdictional authority to DOE and the Nuclear Regulatory Commission (NRC) over governmental and commercial use of nuclear materials. The AEA authorizes DOE to establish standards to protect health or minimize dangers to life or

property with respect to activities under DOE jurisdiction. The DOE has used a series of departmental orders to establish an extensive system of standards and requirements to ensure safe operation of DOE facilities. The AEA gives the Environmental Protection Agency (EPA) the authority to develop generally applicable standards for protection of the general environment from radioactive materials. The EPA has promulgated several regulations under this authority.

- **Bald and Golden Eagle Protection Act (16 USC 668 et seq.)**

The Bald and Golden Eagle Protection Act makes it unlawful to take, pursue, molest, or disturb bald and golden eagles, their nests, or their eggs anywhere in the United States. A permit must be obtained from the U.S. Department of the Interior to relocate a nest that interferes with resource development or recovery operations.

- **Clean Air Act (42 USC 7401 et seq.)**

The Clean Air Act (CAA) is intended to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” Section 118 of the CAA requires each federal agency, with jurisdiction over properties or facilities engaged in any activity that might result in the discharge of air pollutants, to comply with all federal, state, interstate, and local requirements with regard to the control and abatement of air pollution. Section 109 of the CAA directs EPA to set national ambient air quality standards (NAAQS) for criteria pollutants. EPA has identified and set NAAQS for the following criteria pollutants: particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead. The NAAQS are set out in 40 CFR 50. Section 111 of the CAA requires establishment of national performance standards for new or modified stationary sources of atmospheric pollutants. Specific emission increases must be evaluated in order to prevent significant deterioration of air quality. Emissions of air pollutants are regulated by the EPA in 40 CFR 50-99. Emissions of radionuclides and hazardous air pollutants are regulated under the National Emissions Standards for Hazardous Air Pollutants Program (40 CFR 61 and 40 CFR 63).

- **Clean Water Act (CWA) (33 USC 1251 et seq.) (the CWA is also known as the Federal Water Pollution Control Act)**

The Clean Water Act (CWA) was enacted to “restore and maintain the chemical, physical, and biological integrity of the Nation’s water.” The CWA prohibits “discharge of toxic pollutants in toxic amounts” to navigable waters of the United States. Section 313 of the CWA requires all branches of the federal government with jurisdiction over properties or facilities engaged in any activity that might result in a discharge or runoff of pollutants to surface waters, to comply with federal, state, interstate, and local requirements. In addition to setting water quality standards for waterways, the CWA provides guidelines and limitations for effluent discharges from point sources and gives authority for the EPA to implement the National Pollutant Discharge Elimination System (NPDES) Permitting Program. Stormwater discharges are regulated under the NPDES Program.

- **Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act (42 USC 9601 et seq.)**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides a statutory framework for the remediation of waste sites containing hazardous substances and, as

1 amended by the Superfund Amendments and Reauthorization Act, an emergency response program in
2 the event a release (or threat of a release) of a hazardous substance to the environment occurs. Using
3 a hazard ranking system, federal and private contaminated sites are ranked and may be included on
4 the National Priorities List. CERCLA requires federal facilities with contaminated sites to undertake
5 investigations, remediation, and natural resource restoration, as necessary.
6

7 • **Emergency Planning and Community Right-to-Know Act (42 USC 11001 et seq.)**

8 Federal facilities are required under Subtitle A of the Emergency Planning and Community Right-to-
9 Know Act to provide information regarding the inventories of chemicals used or stored at a site and
10 releases from that site to EPA and the state and local emergency response offices. The goal of
11 providing this information is to ensure that emergency plans are sufficient to respond to unplanned
12 releases of hazardous substances. The required information includes inventories of specific chemicals
13 used or stored and descriptions of releases that occur from sites.
14

15 • **Endangered Species Act (16 USC 1531 et seq.)**

16 The Endangered Species Act is intended to prevent further decline of endangered and threatened
17 species and to restore those species and their habitats. Section 7 of the act requires federal agencies to
18 consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service to
19 ensure that any action carried out by the agency is not likely to jeopardize the continued existence of
20 any endangered or threatened species or result in the destruction or adverse modification of any
21 critical habitat for such species.
22

23 • **Fish and Wildlife Coordination Act (16 USC 661 et seq.)**

24 The Fish and Wildlife Coordination Act promotes more effectual planning and cooperation between
25 federal, state, public, and private agencies for the conservation and rehabilitation of the nation's fish
26 and wildlife. The act requires federal agencies to consult with the FWS whenever they plan to
27 conduct, license, or permit an activity involving the impoundment, diversion, deepening, control, or
28 modification of a stream or body of water. The act also requires consultation with the head of the
29 state agency that administers wildlife resources in the affected state. The purpose of this process is to
30 promote conservation of wildlife resources by preventing loss of and damage to such resources and to
31 provide for the development and improvement of wildlife resources in connection with the agency
32 action.
33

34 • **Hazardous Materials Transportation Act of 1975 (49 USC 5101 et seq.)**

35 The Hazardous Materials Transportation Act authorizes the U.S. Department of Transportation to
36 regulate the transportation of hazardous materials by rail, aircraft, vessel, and public highway.
37 Hazardous materials are defined as those chemicals that the Department of Transportation has
38 determined pose unreasonable risks to health, safety, and property during transport activities. The
39 statute and its implementing regulations address issues such as shipping papers to identify and track
40 hazardous materials, packaging and container design, marking, labeling, and performance standards,
41 and employee and public training programs. The regulations also contain specific requirements
42 relating to the type of shipment being used (i.e., rail, aircraft, vessel, and public highway).
43

1 • **Migratory Bird Treaty Act (16 USC 703 et seq.)**

2 The Migratory Bird Treaty Act is intended to protect birds that have common migration patterns
3 between the United States and Canada, Mexico, Japan, and Russia. The act regulates the harvest of
4 migratory birds by specifying factors such as the mode of harvest, hunting seasons, and bag limits.
5 The act stipulates that, except as permitted by regulations, it is unlawful at any time, by any means, or
6 in any manner to pursue, hunt, take, capture, or kill any migratory bird.
7

8 • **National Historic Preservation Act (16 USC 470 et seq.)**

9 The National Historic Preservation Act provides for placement of sites with significant national
10 historic value on the National Register of Historic Places. Permits and certifications are not required
11 under the act; however, consultation with the Advisory Council on Historic Preservation is required if
12 a federal undertaking might impact a historic property resource. This consultation generally results in
13 a memorandum of agreement that includes stipulations to minimize adverse impacts to the historic
14 resource. Coordination with the State Historic Preservation Office is undertaken to ensure that
15 potentially significant sites are properly identified, and appropriate mitigation measures are
16 implemented.
17

18 • **Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.)**

19 The Native American Graves Protection and Repatriation Act directs the Secretary of the Interior to
20 guide federal agencies in the repatriation of federal archaeological collections and collections
21 affiliated culturally to American Indian Tribes that are currently held by museums receiving federal
22 funding. This act establishes provisions for the treatment of inadvertent discoveries of American
23 Indians' remains and cultural objects. When discoveries are made during ground-disturbing
24 activities, the following steps are to occur: (1) activity in the area of the discovery is to cease
25 immediately, (2) reasonable efforts are to be made to protect the items discovered, (3) notice of
26 discovery is to be given to the federal agency and the appropriate Tribes, and (4) a period of 30 days
27 is to be set aside following notification for negotiations regarding the appropriate disposition of the
28 discovered items.
29

30 • **National Environmental Policy Act (42 USC 4321 et seq.)**

31 The National Environmental Policy Act (NEPA) establishes a national policy that encourages
32 awareness of the environmental consequences of human activities and promotes consideration of
33 those environmental consequences during the planning and implementing stages of a project. Under
34 NEPA, federal agencies are required to prepare detailed statements to address the environmental
35 effects of proposed major federal actions that might significantly affect the quality of the human
36 environment.
37

38 • **Pollution Prevention Act (42 USC 13101 et seq.)**

39 The Pollution Prevention Act establishes a national policy that pollution should be prevented or
40 reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an
41 environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled
42 should be treated in an environmentally safe manner whenever feasible; and disposal or other release
43 into the environment should be employed only as a last resort and should be conducted in an
44 environmentally safe manner.

1 • **Resource Conservation and Recovery Act (RCRA) of 1976 as amended by the Hazardous and**
2 **Solid Waste Amendments (42 USC 6901 et seq.) of 1984 (RCRA is also known as the Solid**
3 **Waste Disposal Act)**

4 The treatment, storage, and/or disposal of hazardous and nonhazardous waste is regulated under the
5 Solid Waste Disposal Act of 1965, which was amended by the Resource Conservation and Recovery
6 Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984. Any state that seeks
7 to administer and enforce a hazardous waste program pursuant to RCRA may apply for EPA
8 authorization of the state program. The Washington State Department of Ecology (Ecology) has been
9 delegated the authority for implementing the federal RCRA program in the State of Washington. The
10 EPA regulations implementing RCRA define hazardous wastes and specify the transportation,
11 handling, and waste management requirements of these wastes (40 CFR 260-282).

12
13 The Federal Facilities Compliance Act of 1992 (FFCA) (Public Law 102-386) amends RCRA and
14 waives sovereign immunity for fines and penalties for RCRA violations at federal facilities. A
15 provision of the FFCA postpones fines and penalties for 3 years for mixed waste storage prohibition
16 violations at DOE sites and requires DOE to prepare plans for developing the required treatment
17 capacity for mixed waste stored or generated at each facility. Each plan must be approved by the host
18 state or the EPA after consultation with other affected states, and a consent order requiring
19 compliance with the plan must be issued by the regulator. The FFCA also states that DOE will not be
20 subject to fines and penalties for land disposal restriction storage prohibition violations for mixed
21 waste as long as DOE is in compliance with an approved plan and consent order and meets all other
22 applicable regulations.

23
24 • **Safe Drinking Water Act (42 USC 300f et seq.)**

25 The primary objective of the Safe Drinking Water Act is to protect the quality of public water
26 supplies. The act grants EPA the authority to protect the quality of public drinking water supplies by
27 establishing national primary drinking water regulations. EPA delegates authority for enforcement of
28 the standards to the states. EPA regulations specify maximum contaminant levels in public water
29 systems.

30
31 • **Toxic Substances Control Act (15 USC 2601 et seq.)**

32 The Toxic Substances Control Act provides EPA with the authority to require testing of chemical
33 substances (both new and old) entering the environment and, where necessary, to regulate those
34 chemicals. TSCA also regulates the treatment, storage, and disposal of certain toxic substances (e.g.,
35 polychlorinated biphenyls, chlorofluorocarbons, asbestos, dioxins, certain metal-working fluids, and
36 hexavalent chromium).

37
38 • **Washington State Hazardous Waste Management Act (RCW 70.105)**

39 The Washington Hazardous Waste Management Act grants Ecology authority to regulate the disposal
40 of hazardous wastes in Washington and to implement waste reduction and prevention programs.
41 Ecology has adopted extensive regulations that are found in chapter 173-303 of the Washington
42 Administrative Code (WAC). Washington State has received authority from EPA to implement the
43 full RCRA program within the State's borders.

1 • **Washington Clean Air Act (RCW 70.94) and Associated Regulations**

2 Most of the provisions of the Washington Clean Air Act mirror the requirements of the Federal Clean
3 Air Act. The Federal Clean Air Act establishes a minimum or “floor” for Washington air quality
4 programs. The Washington Clean Air Act authorizes Ecology and local air pollution control
5 authorities to implement programs consistent with the Federal Clean Air Act. For example, the
6 Washington Clean Air Act authorizes an operating permit program, enhanced civil penalties, new
7 administrative enforcement provisions, motor vehicle inspections, and provisions addressing ozone
8 and acid rain.

9
10 Washington State also has an extensive set of regulations governing toxic air pollutants (WAC
11 173-460). These regulations are similar to the programs for regulating hazardous air pollutants under
12 the Federal Clean Air Act. In contrast to the Federal Clean Air Act program, which applies to new
13 and existing emission sources, the toxic air pollutant rules apply only to new sources and any
14 modification of an existing source where the modification will increase emissions of toxic air
15 pollutants. Ecology’s toxic air pollutant rules are implemented under the New Source Review
16 Program.

17
18 The Washington State Department of Health regulations, “Radiation Protection—Air Emissions”
19 (WAC 246-247), contain standards and permit requirements for the emission of radionuclides to the
20 atmosphere from DOE facilities based on Ecology standards, “Ambient Air Quality Standards and
21 Emission Limits for Radionuclides” (WAC 173-480).

22
23 The local air authority, Benton Clean Air Authority, enforces regulations pertaining to detrimental
24 effects, fugitive dust, incineration products, odor, opacity, asbestos, and sulfur oxide emissions. The
25 Authority also has been delegated authority to enforce the EPA asbestos regulations.

26
27 Many of the preceding statutes are further discussed in the following subsections.

28
29 **6.2 Land-Use Management**

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31 In September 1999, DOE issued the *Final Hanford Comprehensive Land-Use Plan Environmental*
32 *Impact Statement* (DOE 1999). The Record of Decision (ROD) issued in November 1999 (64 FR 61615)
33 states that the purpose of the land-use plan and its implementing policies is to facilitate decision making
34 about the Hanford Site’s uses and facilities over at least the next 50 years. The ROD adopts the Preferred
35 Alternative land-use maps, designations, policies, and implementing procedures as described in the
36 1999 EIS and designates the Central Plateau (200 Areas) for Industrial-Exclusive use (Figure 4.2). This
37 designation would allow for continued waste management operations in the 200 Areas.

38
39 The Hanford Reach National Monument was created on June 9, 2000, by a proclamation signed by
40 President Clinton under the authority of the Antiquities Act of 1906 (65 FR 37253). The Monument
41 includes 792.6 km² (306 mi²) of federally owned land making up a portion of the Hanford Site
42 (Figure 4.3). The principal components of the Monument are the Fitzner/Eberhardt Arid Lands Ecology
43 Reserve (ALE), the McGee Ranch and Riverlands area, the Saddle Mountain National Wildlife Refuge,
44 the quarter mile Hanford Reach Act (Hanford Reach Act [1988] as amended by Public Law 104-333)